

Suite 906**EMPLOYMENT STATUS*****Employees and Workers
The Employment Contract***

Please note that the information provided herein is not intended to be absolute. It is a compilation of information which has been harmonized to adhere to the foundation of principles as put forth by The UN, the United States and the Commonwealth so it is important that you should check current details with your particular government.

906.01 EMPLOYMENT STATUS

The way you work – and the way people work for you – have very important legal implications.

In simple terms, there are five categories of employment recognised by the law and the tax system:

- self-employed individual
- worker
- employee
- director
- contractor

The same person could be classed in one way for one area of legislation and another for a different area of legislation. A person could also be classed differently depending on the job they are doing.

There are also essential tax and National Insurance contribution differences that come with different ways of working. As an employer, you must recognise the category to which the people who work for you belong, to ensure you fulfil your legal and tax obligations to them.

906.02 WORKERS AND EMPLOYEES

Every employee is also a worker, but not every worker is an employee. All employees are entitled to employment protection rights – though some rights require a minimum period of continuous service.

A number of other rights, such as the National Minimum Wage and regulations on working time, are also available to the wider category of workers.

906.03 CONTRACTS

A person's employment status will depend on whether their contract is a contract of employment or a contract for services.

An employee is someone who works for you under the terms of an employment contract. A contract of employment could be written, oral or implied.

A worker is any individual person who works for you, whether under a contract of employment with you or not, who provides a personal service, eg a casual worker, agency worker or some freelance workers.

THE EMPLOYMENT CONTRACT

The moment an applicant unconditionally accepts your offer of a job, a contract of employment comes into existence. The terms of the contract can be oral, written, implied or a mixture of all three.

Even if you do not issue a written contract, you are under a legal duty to provide the employee with a written statement of main employment particulars within two months of the start of their employment with you. The written statement is not itself the contract but it can provide evidence of the terms and conditions of employment between you and the employee if there is a dispute later on.

906.04 WHAT A CONTRACT OF EMPLOYMENT IS

The terms of contract of employment may be oral, written, implied or a mixture of all three. They can be found in a variety of places:

- The original job adverts
- Letters
- Agreements
- Staff rules and handbook

An oral contract is as binding as a written one, though its terms may be more difficult to prove.

Where you want to include provisions specific to the individual, these must be stated in writing.

If a written contract is issued, it is advisable to include a term stating that it replaces all previous discussions/correspondence in relation to terms of employment provided the employee accepts this.

Written statements

If an employee works for you for a month or longer, you must give them a written statement of specified terms and conditions within two months of starting their employment with you – earlier if, within this period, you sent them abroad for more than a month.

The written statement is not a contract in itself, but in the case of a dispute it can be used as evidence of an employee's terms and conditions.

How to change an existing contract

If you want to change the terms of an employee's contract of employment, you will need to get his or her prior written consent to the changes. This will be the case whether the contract is oral, implied or written. Otherwise the employee may be entitled to sue for breach of contract or resign and claim constructive dismissal.

Changes to the written statement

You must tell the employee in writing about any changes to the written statement no later than one month after you have made the change. A change to the statement will still require the employee being required to work outside the country for more than a month, and they will be leaving within a month of the change, you should tell them in writing before they leave.

Put together an employee's written statement

The written statement can take the form of a single document, in which case all of the information listed on this page must be included in that document.

It is also possible to give your written statement to employees in separate parts, provided they receive all parts within two months of starting work. Some particulars of employment must be given in the single document described as the "principal statement".

The principal statement should include the following information:

- The legal name of the employer company – it is a good idea also to include the trading name, if different.
- The legal name of the employee
- The date the current employment began
- Any earlier date upon which employment with a previous employer began which is treated as "continuous" with the current employment
- The employee's pay, or how it is calculated, and the intervals at which it will be paid –e.g. weekly or monthly.
- The employee's hours of work
- Entitlement to holidays – including public holidays – and holiday pay. The information must be accrued enough to allow precise calculation of accrued entitlement.
- Job title or a brief description of the work
- The address of the employee's place of work. If they will be working in more than one place then this should be indicated along with the employer's address.

Put together an employee's written statement in separate parts

If the written statement is given in separate parts, the following information – if not contained in the "principal statement" – must be provided within two months of starting work. Alternatively, you can include this information in another document, eg the company handbook, which is accessible to the employee. Where there are no details to be given under any heading, you should say so.

- **Sickness, injury and sick pay** – terms and conditions relating to sickness or injury including any sick pay provisions
- **Period of employment** – where the employment is temporary, the period it's to continue for, or, if it is a fixed-term contract, the date it's to end.
- **Notice periods** – the length of notice required from both parties. Rather than stating specific terms you can refer to the relevant legislation.
- **Employment abroad** – details of any terms relating to employment abroad for more than a month.
- **Collective agreements** – details of any collective agreements with trade unions which directly affect the terms and conditions of employment.
- **Pensions** – any terms relating to pensions and pension schemes including whether the employment is covered by a pensions contracting-out certificate.
- **Disciplinary and grievance** – the name or job title of the person the employee should apply to in order to resolve a grievance, how this application should be made and further steps that may follow. The note should also include:
 1. Any disciplinary rules that you have or you should refer to a document containing the rules, which is accessible to the employee.
 2. The names or job title of the person an employee should apply to if they're dissatisfied with any disciplinary decision, how an application should be made and any further steps which may follow in the disciplinary procedure.

Implied terms of an employment contract

As well as the terms you actually agree with your employee, an employment contract can include implied terms.

Implied terms include:

- The duty of the employer to provide a secure, safe and healthy environment for employees
- The employee's duty of honesty and loyal service
- An implied duty of mutual trust and confidence between you and your employees that neither side will act in such a way as to breach that trust
- A term too obvious to need stating, e.g. that your employee will not steal from you.
- Any terms that are necessary to make the contract workable, eg that someone employed as a driver will have a valid driving licence.

Some terms and conditions, e.g. entitlement to enhanced redundancy pay, may become part of the contract through established custom and practice.

The law also imposes some terms automatically, such as the right to paid holidays and the right to receive the legal statutory minimum Wage.

906.05 SENDING A NEW EMPLOYEE ABROAD

If a new employee will normally work domestically but will be required to work for you abroad for more than a month, the written statement you give them must include details of:

- The period they will be employed abroad
- The currency in which they will be paid
- Any additional pay or benefits provided because of employment abroad
- Terms relating to their return to their original country of employment.

There is a special case for employees who will leave to work abroad for more than a month within two months of starting work. You should give any such employees their written statements before they leave.

Helpful links:

Guidance on written statements of employment:

<http://www.dti.gov.uk/er/individual/statement-pl1700.htm>

Guidance on contracts of employment:

<http://www.acas.org.uk/publications/pdf/contractsofemployment.pdf>

Guidance on varying a contract of employment:

<http://www.dti.gov.uk/er/pay/contracts-pl810.htm>

CANADA

**Listings and links to all sections
Of the Canadian Government:**

http://www.canada.gc.ca/depts/major/depind_e.html

**The following link will provide the individual information
on each Province in Canada.**

<http://www.bsa.cbasc.org/gol/bsa/interface.nsf/vSSGBasic/su10000e.htm>

IRELAND

The Government of Ireland Official Gateway

<http://www.irlgov.ie/>

Irish local government Council websites:

<http://www.outlood.com/localgov/eire.htm>

AUSTRALIA

Australian Commonwealth Government Gateway

<http://www.australia.gov.au/>

General Information

<http://gov.info.au/>

Federal, State and Local Government

<http://www.nia.gov.au/oz/gov/>

UNITED STATES OF AMERICA

United States Department of Labor:

<http://www.dol.gov/>

United States Bureau of Labor Statistics: (includes General Job Descriptions)

<http://www.bls.gov>

United States Employee Safety and Health:

<http://www.osha.gov>

UNITED KINGDOM

Department of Trade and Industry:

<http://www.dti.gov.uk/employment>

[NEW ZEALAND](#)

The Government of New Zealand Gateway

<http://www.govt.nz/>

The E-Government site for New Zealand

<http://www.e.govt.nz/>

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